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PROGRESSIVE FINANCIAL SERVICES, INC.

6 UNITED STATES DISTRICT COURT

7 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

8 CAROL P. GUEVARRA, Individually and on  
9 behalf of all others similarly situated,

10 Plaintiff,

11 v.

12 PROGRESSIVE FINANCIAL SERVICES, INC.,

13 Defendants.  
14

Case No.: C 05 3466 VRW

**STIPULATED PROTECTIVE ORDER**

15 1. PURPOSES AND LIMITATIONS

16 Disclosure and discovery activity in this action are likely to involve production of confidential,  
17 proprietary, or private information for which special protection from public disclosure and from use for  
18 any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby  
19 stipulate to and petition the Court to enter the following Protective Order. This Order does not confer  
20 blanket protections on all disclosures or responses to discovery and that the protection it affords  
21 extends only to the limited information or items that are entitled under the applicable legal principles to  
22 treatment as confidential. As set forth in Section 10, below, this Protective Order creates no  
23 entitlement to file confidential information under seal; **Civil Local Rule 79-5** sets forth the procedures  
24 that must be followed and reflects the standards that will be applied when a party seeks permission  
25 from the court to file material under seal.

26 2. DEFINITIONS

27 2.1 Party: any party to this action, including all of its officers, directors, employees,  
28 consultants, retained experts, and outside counsel (and their support staff).

1           2.2    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner generated, stored, or maintained (including, among other things, testimony,  
3 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery  
4 in this matter. This includes the production of class member information.

5           2.3    "Confidential" Information or Items: information (regardless of how generated,  
6 stored or maintained) or tangible things that qualify for protection under standards developed under  
7 **F.R.Civ.P.26(c)**.

8           2.4    "Highly Confidential – Attorneys 'Eyes Only'" Information or Items: extremely  
9 sensitive "Confidential Information or Items" whose disclosure to another Party or non-party would  
10 create a substantial risk of serious injury that could not be avoided by less restrictive means.

11           2.5    Receiving Party: a Party or the Class Administrator that receives Disclosure or  
12 Discovery Material from a Producing Party, including a class list.

13           2.6    Producing Party: a Party or non-party that produces Disclosure or Discovery  
14 Material in this action.

15           2.7    Designating Party: a Party or non-party that designates information or items that  
16 it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential –  
17 Attorneys' Eyes Only."

18           2.8    Protected Material: any Disclosure or Discovery Material that is designated as  
19 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only", as well as Class member  
20 information

21           2.9    Outside Counsel: attorneys who are not employees of a Party but who are  
22 retained to represent or advise a Party in this action.

23           2.10   House Counsel: attorneys who are employees of a Party.

24           2.11   Counsel (without qualifier): Outside Counsel and House Counsel (as well as  
25 their support staffs).

26           2.12   Expert: a person with specialized knowledge or experience in a matter pertinent  
27 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
28 consultant in this action and who is not a Party or a current employee of a Party or of a competitor of a

1 Party and who, at the time of retention, is not anticipated to become an employee of a Party or a  
2 competitor of a Party. This definition includes a professional jury or trial consultant retained in  
3 connection with this litigation.

4           2.13 Professional Vendors: persons or entities that provide litigation support services  
5 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,  
6 retrieving data in any form or medium; etc.) and their employees and subcontractors.

7           2.14 Class Administrator: persons or entities that assist in mailing notices to the class  
8 and/or administrate settlement funds or damages awarded by the Court, and their employees and  
9 subcontractors.

10           2.15 Class Member Information: excluding information regarding Plaintiff, names  
11 and contact information regarding putative or actual class members, as well as the putative or actual  
12 class members' financial and medical information, including but not limited to whether and to whom a  
13 person owes money, the identity of a person's medical provider, medical procedures contemplated or  
14 performed, and social security numbers.

### 15           3. SCOPE

16           The protections conferred by this Order cover not only Protected Material (as defined above),  
17 but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or  
18 compilation thereof, plus testimony, conversations, or presentations by parties or counsel to or in court  
19 or in other setting that might reveal Protected Material.

### 20           4. DURATION

21           Even after the termination of this litigation, the confidentiality obligations imposed by this  
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
23 otherwise directs.

### 24           5. DESIGNATING PROTECTED MATERIAL

25           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
26 Party or non-party that designates information or items for protection under this Order must take care  
27 to limit any such designation to specific material that qualifies under the appropriate standards. A  
28 Designating Party must take care to designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of the material,  
2 documents, items, or communications for which protection is not warranted are not swept unjustifiably  
3 within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to  
5 be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber  
6 or retard the case development process, or to impose unnecessary expenses and burdens on other  
7 parties), expose the Designating Party to possible sanctions.

8 If it comes to a Party's or a non-party's attention that information or items that it designated for  
9 protection do not qualify for protection at all, or do not qualify for the level of protection initially  
10 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the  
11 mistaken designation.

12 5.2 Manner and Timing of Designation. Except as otherwise provided in this Order  
13 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material  
14 that qualifies for protection under this Order must be clearly so designation before the material is  
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of  
18 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend  
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of  
20 each page that contains protected material. If only a portion or portions of the material on a page  
21 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
22 making appropriate markings in the margins) and must specify, for each portion, the level of protection  
23 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
24 ONLY").

25 "Documentary form" includes electronic files. Electronic files must also be affixed with the  
26 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the  
27 top of each page that contains protected material, although such designation may be in a header. If  
28 only a portion or portions of the material on a page of an electronic file qualifies for protection, the

1 Producing Party also must print the file, to the extent possible and then clearly identify the protected  
2 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion,  
3 the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
4 ATTORNEYS' EYES ONLY"). If a printed version is produced, the electronic version need not be.

5 A Party or non-party that makes original documents or materials available for inspection need  
6 not designate them for protection until after the inspecting Party has indicated which material it would  
7 like copied and produced. During the inspection and before the designation, all of the material made  
8 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
9 ONLY." After the inspecting Party has identified the documents it wants copied and produced, the  
10 Producing Party must determine which documents, or portions thereof, qualify for protection under  
11 this Order, then, before producing the specified documents, the Producing Party must affix the  
12 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
13 ONLY") at the top of each page that contains Protected Material as described above. If only a portion  
14 or portions of the material on a page qualifies for protection, the Producing Party must annotate the  
15 material as described above under documentary form.

16 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
17 that the Party or nonparty offering or sponsoring the testimony identify on the record, before the close  
18 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any  
19 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
20 ONLY." When it is impractical to identify separately each portion of testimony that is entitled to  
21 protection, and then it appears that substantial portions of the testimony may qualify for protection, the  
22 Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the  
23 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of  
24 the testimony as to which protection is sought and to specify the level of protection being asserted  
25 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those  
26 portions of the testimony that are appropriately designated for protection within the 20 days shall be  
27 covered by the provisions of this Stipulated Protective Order.

28 (c) for information produced in some form other than documentary, and for

1 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
 2 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information or  
 4 item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
 5 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’  
 6 Eyes Only.”

7           5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent failure  
 8 to designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’  
 9 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection under  
 10 this Order for such material. If material is appropriately designated as “Confidential” or “Highly  
 11 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on  
 12 timely notification of the designation, must make reasonable efforts to assure that the material is  
 13 treated in accordance with the provisions of this Order.

#### 14           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15           6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
 16 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
 17 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its  
 18 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 19 original designation is disclosed.

20           6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
 21 Party’s confidentiality designation must do so in good faith and must begin the process by conferring  
 22 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for  
 23 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the  
 24 confidentiality designation was not proper and must give the Designating Party an opportunity to  
 25 review the designated material, to reconsider the circumstances, and, if no change in designation is  
 26 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next  
 27 stage of the challenge process only if it has engaged in this meet and confer process first.



6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under **Civil Local Rule 7** (and in compliance with **Civil Local Rule 79-5**, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party, if permitted under this Stipulated Protective Order, in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) the Receiving Party and the officers, directors, and employees (including

House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

(g) the author of the document or the original source of the information.

### 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure



1 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
2 Protective Order" (Exhibit A); and

3 (e) the author of the document or the original source of the information.

4 7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL –  
5 ATTORNEYS' EYES ONLY" Information or Items to "Experts".

6 (a) Unless otherwise ordered by the court or agreed in writing by the  
7 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any  
8 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
9 ONLY" first must make a written request to the Designating Party that (1) identifies the specific  
10 HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the  
11 Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence,  
12 (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s),  
13 (5) identifies each person or entity from whom the Expert has received compensation for work in his or  
14 her areas of expertise or to whom the expert has provided professional services at any time during the  
15 preceding five years, and (6) identifies (by name and number of the case, filing date, and location of  
16 court) any litigation in connection with which the Expert has provided any professional services during  
17 the preceding five years.

18 (b) A Party that makes a request and provides the information specified in  
19 the preceding paragraph may disclose the subject Protected Material to the identified Expert unless,  
20 within seven court days of delivering the request, the Party receives a written objection from the  
21 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and confer  
23 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
24 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file  
25 a motion as provided in **Civil Local Rule 7** (and in compliance with **Civil Local Rule 79-5**, if  
26 applicable) seeking permission from the court to do so. Any such motion must describe the  
27 circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is  
28 reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any

1 additional means that might be used to reduce that risk. In addition, any such motion must be  
 2 accompanied by a competent declaration in which the movant describes the parties' efforts to resolve  
 3 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets  
 4 forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

5 In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of  
 6 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 7 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8 The burden of persuasion in any such challenge proceeding shall be on defense counsel. Until  
 9 the court rules on the challenge, all parties shall continue to afford the material in question the level of  
 10 protection to which it is entitled.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 12 LITIGATION.

13 If a Receiving Party is served with a subpoena or an order issued in other litigation that would  
 14 compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
 15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the  
 16 Designating Party, in writing (by fax, if possible) immediately and in no event more than five court  
 17 days after receiving the subpoena or order. Such notification must include a copy of the subpoena or  
 18 court order.

19 The Receiving Party also must immediately inform in writing the Party who caused the  
 20 subpoena or order to issue in the other litigation that some or all the material covered by the subpoena  
 21 or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of  
 22 this Protective Order promptly to the Party in the other action that caused the subpoena or order to  
 23 issue.

24 The purpose of imposing these duties is to alert the interested parties to the existence of this  
 25 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
 26 confidentiality interests in the court from which the subpoena or order issued. The Designating Party  
 27 shall bear the burdens and the expenses of seeking protection in that court of its confidential material –  
 28 and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in

1 this action to disobey a lawful directive from another court.

2 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
4 Material to any person or in any circumstance not authorized under this Protective Order, the  
5 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
6 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person  
7 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
8 such person or persons to execute the "Acknowledgment and agreement to Be Bound" that is attached  
9 hereto as Exhibit A. With respect to information that relates to a non-party, but was produced by a  
10 Party, the Receiving Party shall also bear the cost of any notice to the non-party or non-parties as is  
11 required by law.

12 10. FILING PROTECTED MATERIAL.

13 Without written permission from the Designating Party or a court order secured after  
14 appropriate notice to all interested persons, a Party may not file in the public record in this action any  
15 Protected Material. A Party that seeks to file under seal any Protected Material must comply with  
16 **Civil Local Rule 79-5.**

17 11. FINAL DISPOSITION.

18 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after  
19 the final termination of this action, each Receiving Party must return all Protected Material to the  
20 Producing Party. The parties have agreed that financial information produced by defendant within 14  
21 days of the execution of this protective order by the parties will be return, including but not limited to  
22 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of  
23 financial information produced by defendant within 14 days of the execution of this protective order by  
24 the parties.

25 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
26 summaries or any other form of reproducing or capturing any of the Protected Material. With  
27 permission in writing from the Designating Party, the Receiving Party may destroy some or all of the  
28 Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the

Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the deadline to return the documents that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS.

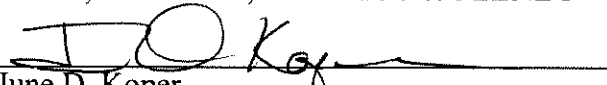
12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

DATED: August 8, 2006

MURPHY, PEARSON, BRADLEY & FEENEY

By

  
June D. Koper  
Attorneys for Defendants PROGRESSIVE  
FINANCIAL SERVICES, INC.

DATED: August 8, 2006

HORWITZ, HORWITZ & ASSOC.

By

S/ O. Randolph Bragg  
O. Randolph Bragg  
Attorneys for Plaintiff CAROL P. GUEVARRA

GOOD CAUSE EXISTING, IT IS SO ORDERED.

DATED: August 14, 2006

  
VAUGHN R. WALKER  
United States District Judge

### ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Signature: \_\_\_\_\_

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